

MILDRED W. HIATT)	
Claimant)	
)	
VS.)	
)	
BOEING COMPANY)	
Respondent)	Docket No. 1,019,858
)	
AND)	
)	
INDEMNITY INS. CO. OF NORTH AMERICA)	
Insurance Carrier)	

¹ ALJ Order (Aug. 30, 2005).

Respondent argues that these payments constitute a continuation of income and therefore claimant should not be entitled to additional or duplicative compensation as a result of her injury.

The only issue to be addressed in this matter is whether the ALJ appropriately suspended the payment of the claimant's TTD benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only allegations that an administrative law judge exceeded his or her jurisdiction.² This includes review of the preliminary hearing issues listed in K.S.A. 44-534a(a)(2) as jurisdictional issues, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act.³

The issue of whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). Additionally, the issue whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁴

The ALJ has the jurisdiction and authority to deny temporary total disability benefits at a preliminary hearing. He likewise has the power to decide whether those benefits should be suspended based upon a contractual provision between the parties.

² K.S.A. 44-551.

³ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

⁴ *Allen v. Craig*, 1 Kan. App. 2d 301, 303 and 304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

Accordingly, the Board does not have jurisdiction to address this issue at this juncture of the proceedings. Claimant's appeal is therefore dismissed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing by the entire Board on the claim.⁵

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated August 30, 2005, is dismissed.

IT IS SO ORDERED.

Dated this _____ day of October, 2005.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Kirby Vernon, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁵ K.S.A. 44-534a(a)(2).